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Attorney for Creditor U.S. Bank Trust N.A., As Trustee of the Igloo Series
III Trust, its successors and assigns its successors and assigns

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA – LAS VEGAS DIVISION

In re:)	CASE NO.: 14-16057-btb
)	
)	Chapter 13
IGNACIO ALVAREZ,)	
)	
)	MOTION FOR RELIEF FROM STAY (11
Debtor.)	U.S.C. <i>Section</i> 362 Bankruptcy Rule 4001)
)	
)	
)	
)	

A. INTRODUCTION

COMES NOW, U.S. Bank Trust N.A., As Trustee of the Igloo Series
III Trust (“**Movant**”) and moves this Court for an order terminating the automatic stay, allowing
Movant to proceed with and complete any and all contractual and statutory remedies incident to its
security interest held in real property commonly described as 4308 KEITHAN CIR, LAS VEGAS,

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1 NV 89110 (the “**Property**”), and legally described as set forth in the Deed of Trust attached as an
2 Exhibit to the declaration of BSI Financial Services in support of 4308 KEITHAN CIR, LAS
3 VEGAS, NV 89110 Motion for Relief from Stay, on file with the Court. Movant further seeks relief
4 in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan
5 modification, refinance agreement or other loan workout/loss mitigation agreement and to contact
6 the Borrowers via telephone or written correspondence to offer such an agreement, which shall be
7 non-recourse unless included in a reaffirmation agreement. Movant further moves that, absent
8 objection, the provisions of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration of Movant’s
9 secured position.

10 **B. JURISDICTION**

11 This Court has jurisdiction over this proceeding pursuant to 28 U.S.C § 1334 and 28
12 U.S.C. § 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (“**Code**”).
13 This proceeding is defined as a “core proceeding” as that is defined in the Code.

14 **C. STANDING**

15 Under 11 U.S.C. § 362, a party seeking relief from stay must be a “party in interest.” To
16 establish that Movant is a “party in interest,” it must establish that it has at least a colorable claim to
17 the property that is the subject of the motion. In the case at bar, Movant’s claim is based on the Note
18 and Deed of Trust attached to the declaration of BSI Financial Services in support of U.S. Bank
19 Trust N.A., As Trustee of the Igloo Series III Trust’s Motion for Relief from Stay, on file with the
20 Court. Movant’s interest in the Note and Deed of Trust is described above. The Deed of Trust acts
21 as the security for the Debtor’s payment on the Note. The Deed of Trust is recorded with the county
22 in which the property is situated as evidence of the debt described in the Note for the benefit of any
23 subsequent parties that may take an interest in the property described.

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D. FACTS

1. The Borrower executed and delivered to, World Savings Bank, FSB, a Pick a Payment Note dated July 13, 2004 in the original principal amount of \$96,000.00 (the “**Note**”). A true and correct copy of the Note is attached as Exhibit “1” and incorporated herein by reference.

2. Movant is the current owner of the Note and is in possession of the original Note.

3. Concurrently therewith, and as security for the Note, Debtor executed and delivered to World Savings Bank, FSB a Deed of Trust which was recorded in the Official Records of Clark County, Nevada as Document No.: 20040720-0005635 on July 13, 2004 (the “**Deed of Trust**”), and which encumbers the Property. A true and correct copy of the Deed of Trust is attached as Exhibit “2” and incorporated herein by reference.

4. Thereafter, all interests in the Deed of Trust were assigned to Movant by Assignment of Deed of Trust. A true and correct copy of each Assignment is attached hereto as Exhibit “3” and is incorporated herein by reference.

5. Pursuant to the Deed of Trust, Movant is entitled to recover attorneys’ fees and costs in connection with the matter herein.

6. Pursuant to the Deed of Trust, Movant is entitled to take the necessary steps to protect its security interest in the Property, including advancing taxes, insurance, foreclosure fees and costs and attorney’s fees and costs and to assess the costs plus interest, to the balance due under the loan.

7. Movant’s loan is due for the February 15, 2018, payment and all subsequent payments as follows:

2/15/2018	\$861.94
3/15/2018	\$861.94
4/15/2018	\$861.94
5/15/2018	\$861.94

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6/15/2018	\$861.94
7/15/2018	\$861.94
8/15/2018	\$861.94
9/15/2018	\$861.94
10/15/2018	\$861.94
11/15/2018	\$861.94
11/15/2018	
Attorneys Fees	\$1,081.00
Suspense	(\$257.82)
TOTAL	\$9,442.58

8. The current unpaid principal balance is no less than approximately \$84,128.65.

9. The total owed to Movant is no less than approximately \$105,993.16.

10. Movant is informed and believes that the Property is valued at approximately \$103,762.00 pursuant to Debtors' Schedule "A" and Schedule "D".

11. There is no equity protecting Movant's lien.

12. The Debtors are not in the process of a loan modification.

13. Movant seeks relief to enforce its rights in Movant's Note and Deed of Trust as a result of the substantial default under the Note and Deed of Trust.

14. Debtor's Chapter 13 Plan provides for the direct payment of Movant's post-petition monthly mortgage payment.

E. AUTHORITY

1. Cause Exists to Grant Relief Pursuant to Section 362(d)(1); Lack of Adequate Protection

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1 Movant submits that cause exists to grant relief under *Section 362(d)(1)*. Bankruptcy
 2 Code *Section 362(d)(1)* provides that a party may seek relief from stay based upon “cause,”
 3 including lack of adequate protection. Adequate protection can be offered in the form of cash or
 4 periodic payments or the existence of a sufficient equity cushion.

5 Movant submits that adequate protection in this case requires normal and periodic cash
 6 payments to Movant, as called for by the Note. The Borrowers have not made a mortgage
 7 payment to Movant in **Ten (10) months**. A continuing failure to maintain required regular
 8 payments has been held, in and of itself, to constitute sufficient cause for granting a motion to
 9 modify the stay. (*In re Trident Corp.*, 19 BR 956,958 (Bankr. E.D. Pa. 1982), *aff’d* 22 BR 491
 10 (Bankr. E.D. Pa. 1982 (citing *In re Hinkle*, 14 BR 202, 204 (Bankr. E.D. Pa. 1981); see also *In re*
 11 *Jones*, 189 BR 13, 15 (Bank. E.D. Okla 1995) (citing *Hinkle*, 14 BR at 204)). The Borrower’s
 12 failure to tender regular ongoing monthly mortgage payments is sufficient cause to terminate the
 13 automatic stay.

14 15 **2. CONCLUSION**

16 THEREFORE, Movant respectfully requests an Order be entered by this Court as follows:

- 17 1. Terminating the automatic stay pursuant to 11 U.S.C. §362 allowing Movant to immediately
 18 proceed with and complete any and all contractual and statutory remedies incident to the security
 19 interest held under its Note and Deed of Trust in the Property;
- 20 2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;
- 21 3. Granting Movant leave to foreclose on the Property and to enforce the security interest under
 22 the Note and Deed of Trust, including any action necessary to obtain possession of the Property;
- 23 4. Permitting Movant to offer and provide Borrowers with information regarding a potential
 24

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1 forbearance agreement, loan modification, refinance agreement, or other loan workout/loss
2 mitigation agreement and to enter into such agreement with Borrowers;

3 5. For the order to be made binding and effective in any future bankruptcy case, no matter who
4 the debtor may be;

5 6. That the attorney's fees and costs incurred by Movant for filing the instant Motion be
6 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;
7 and

8 7. For such other and further relief as the Court deems just and proper.

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11 DATED: December 19, 2018, 2018

By: /s/ Jennifer R. Bergh, Esq.

Jennifer R. Bergh, Esq.

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